

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID IMIOLA,

Plaintiff,

v.

Civil Action No. _____

FORSTER & GARBUS, LLP.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought in response to Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 15 U.S.C. §1692k(d), 28 U.S.C. § 1331, and 28 U.S.C. § 1337.
3. Venue is proper in this district under 28 U.S.C. §1391(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

4. Plaintiff David Imiola is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant Forster & Garbus, LLC is a domestic business corporation organized and existing under the laws of the State of New York and is a "debt collector" as that term is defined by 15 U.S.C. §1692a(6).
6. Defendant regularly attempts to collect debts alleged to be due another.
7. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.

8. All references to “Defendant” herein shall mean the Defendant or an employee of the Defendant.

IV. FACTUAL ALLEGATIONS

9. That Plaintiff did not incur a credit card debt to Capital One. That another “David Imiola incurred said debt. This debt will be referred to as “the subject debt.”
10. That the subject debt arose out of a transaction in which money, services or property, which was the subject of the transaction, was primarily for personal, family and/or household purposes. As such, said debt is a “debt” as that term is defined by 15 U.S.C. §1692a(5).
11. That this other David Imiola thereafter defaulted on the subject debt.
12. That upon information and belief Defendant was employed by Capital One to collect on the subject debt. That in or about July 2003 Defendant filed a complaint on behalf of Capital One in Buffalo City Court bearing index number CV555551-03 of which Defendant obtained a default judgment on behalf of its client, Capital One, on or about December 2003.
13. That in or about March 1, 2013, Defendant began garnishing Plaintiff wages through his employer, Buffalo Board of Education, in an attempt to collect on the subject debt. Plaintiff was garnished for over two pay periods in the month of March 2013.
14. That in or about April 1, 2013, Plaintiff’s wife upon viewing Plaintiff’s pay stubs, noticed that his wages were being garnished. Plaintiff immediately contacted the Erie County Sheriff’s Department regarding the garnishment. The Erie County Sheriff’s Department stated to Plaintiff that the social security numbers for the judgment debtor did not match Plaintiff’s social security number.
15. That as a result of Defendant’s acts Plaintiff became nervous, upset, anxious, and suffered from emotional distress.

V. CAUSE OF ACTION

16. Plaintiff repeats, re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.
17. The conduct of Defendant as described in this complaint violated the Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) as follows:
- A. Defendant violated 15 U.S.C. §1692e, 15 U.S.C. §1692e(2)(A), 15 U.S.C. §1692e(10), 15 U.S.C. §1692f, and 15 U.S.C. §1692f((1) by proceeding with a garnishment for a debt and judgment that was not the Plaintiff’s.

18. That as a result of the Defendant's FDCPA violations as alleged herein, Plaintiff became nervous, upset, anxious and suffered from emotional distress.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendant for:

- (a) Actual damages;
- (b) Statutory damages for pursuant to 15 U.S.C. § 1692k.
- (c) Costs, disbursements and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k.
- (d) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Please take notice that Plaintiff demands trial by jury in this action.

Dated: June 10, 2013

/s/ Seth J. Andrews
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